

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3030, 3050, 3268.2, 3355, 3355.1, and to adopt 3355.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the care and treatment of pregnant inmates in adult institutions.

Assembly Bill (AB) 478 (Chapter 608, Statutes of 2005), changed existing provisions of the Penal Code and the Welfare and Institutions Code relating to adult inmates and juvenile wards who give birth while under the jurisdiction of the CDCR. Specific to adult institutions, these proposed regulations will bring the Department into compliance with amended Penal Code (PC) Sections 3419, 3423, 3424, and 5007.7, and are necessary in order to ensure that the safety and medical concerns of pregnant inmates and their unborn children are met during pregnancy and delivery.

These regulations will update current language relating to pregnant inmates and the issuance of state clothing, regular meals, use of restraints, and health and dental examinations. In addition, these regulations provide new language governing pregnant inmate health care, dental care, nutrition, education, childbirth, and community treatment programs.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

3030. Issuance and Possession of State Clothing and Linen.

Subsection 3030(a) through (b)(3)(B) are unchanged.

Subsections 3030(b)(3)(C) and (D) are amended. In (C), to correctly start the sentence, the lower case "b" has been changed to an upper case "B" in the word "Bras", and in (D), the letter "u" has been added to correctly spell the word "muumuu".

Subsections 3030(b)(3)(E) through (H) are unchanged.

New subsection 3030(b)(3)(I) is adopted to provide pregnant inmates one additional larger pair of shoes. This is necessary in order to accommodate the swelling of their feet during pregnancy.

Subsections 3030(c) through (e) are unchanged.

3050. Regular Meals.

Subsection 3050(a) is amended for correction purposes by providing that the Food and Nutrition Board of the Institute of Medicine, National Academy of Science is the authority that the Department follows when setting nutritional levels of Recommended Dietary Allowances, and Dietary Intakes.

Subsections 3050(a)(1) and (2) are unchanged.

New subsection 3050(a)(3) is adopted to provide pregnant inmates with the extra nutritional requirements needed for a healthy and successful pregnancy.

Subsection 3050(b) is unchanged.

3268.2. Use of Restraints

Subsections 3268.2(a) through (b)(4) are unchanged.

New subsection 3268.2(b)(5) is adopted to bring the Department into compliance with PC Section 3423. New language provides that mechanical restraints shall not be placed on an inmate during labor, during transport to a hospital, during delivery, and while in recovery after giving birth unless circumstances exist that require the immediate application of mechanical restraints to avoid the imminent threat of death, escape or great bodily injury.

Subsection 3268.2(c) is unchanged.

Existing subsection 3268.2(d) is renumbered to new subsection 3268.2(e) and is unchanged.

New subsections 3268.2(d), (d)(1), (d)(2), and (d)(3) are adopted to clarify the requirements for the use of mechanical restraints on inmates who are or are suspected of being pregnant. The purpose of these amendments is to protect the unborn child by removing any confusion concerning the use of mechanical restraints on pregnant inmates.

3355. Health Care Examinations.

Subsection 3355(a) is amended for correction purposes by deleting the reference to the abolished Director of Corrections and replacing it with the Secretary of the CDCR. In addition, clarifying language has been added to provide that female inmates will also be screened for pregnancy on their initial health examination, which is the necessary first step to determine, either by self report or by physical appearance, that a female inmate may be pregnant.

Subsections 3355(b) through (d) are unchanged.

3355.1. Dental Examinations.

Subsections 3355.1(a) through (b)(3) are unchanged.

Existing subsection 3355.1(c) is renumbered to 3355.1(d) and is unchanged.

New subsection 3355.1(c) is adopted to comply with PC Section 3424 concerning a dental cleaning for pregnant inmates. The Department has provided that during the second trimester of gestation, which is the safest period in which to provide routine dental care, the pregnant inmate shall receive a dental examination and

cleaning, a periodontal evaluation, and during the gestation period, receive the necessary dental care that will maintain periodontal health. The emphasis by the Department is that the dental treatment during this period is to control active periodontal disease and eliminate potential problems, such as infection, that may occur later in the pregnancy.

Existing subsection 3355.1(d) is renumbered to 3355.1(e) and is amended for clarification by referencing the rules provided in subsections 3268.2(b) and (d) that concern the use of restraints for pregnant inmates.

New section 3355.2 is adopted to comply with AB 478 and/or to ensure that the safety and proper medical care of pregnant inmates and their unborn children during pregnancy is provided.

3355.2. Treatment for Pregnant Inmates.

New subsections 3355.2(a) and (b) are adopted to provide that inmates identified as possibly being pregnant during the initial health examination will be scheduled for laboratory work to verify pregnancy within three business days of arrival at the institution, and if confirmed pregnant, will be scheduled for an obstetrics (OB) examination within seven days of arrival at the institution. These steps are necessary so that the Department can confirm inmate pregnancy as quickly as possible and begin an effective plan for the care and treatment of the inmate and unborn child.

New subsections 3355.2(c), (c)(1), (c)(2), (c)(3), and (c)(4) are adopted to provide the schedule of OB visits for pregnant inmates, unless it will otherwise be indicated or changed by a OB physician or Nurse Practitioner (NP). This amendment is necessary to ensure that each pregnant inmate will be provided consistent care throughout their term of pregnancy.

New subsection 3355.2(d) is adopted to provide that pregnant inmates housed in a multi-tier housing unit, will be issued a CDC Form 7410, Comprehensive Accommodation Chrono, which is incorporated by reference, for a lower bunk and lower tier housing. This change is necessary to minimize strenuous activity and/or potential falls for the pregnant inmate and at the same time protect the health and well being of the unborn child.

New subsection 3355.2(e) is adopted to specify that pregnant inmates who have used heroin within three days prior to incarceration, either by self admission or written documentation by a parole agent, or are currently receiving methadone treatments, shall be enrolled in the Methadone Maintenance Program, and recommended for immediate transfer to the California Institution for Women, which is currently the clinic location for the Methadone Maintenance Program. This amendment is necessary in order to provide for the health and well being of both the pregnant inmate and unborn child.

New subsection 3355.2(f) is adopted to bring the Department into compliance with PC Section 3419. These regulations provide that any community treatment program developed for eligible pregnant and/or parenting female inmates in addition to the Family Foundations Program, shall include but not be limited to, prenatal care, access to prenatal vitamins, childbirth education, and infant care.

New subsection 3355.2(g) is adopted to comply with PC Section 3419 by providing that any inmate who gives birth after her receipt by the Department, shall be provided notice of, and a written application for, a community treatment program. At a minimum, the notice shall contain the guidelines for qualification, timeframe for application, and the process for appealing a denial of admittance.

New subsection 3355.2(h) is adopted to bring the Department into compliance with PC Section 3424. These regulations provide that a pregnant inmate who is not eligible for a community treatment program shall have access to complete prenatal health care which shall include a balanced, nutritious diet approved by a doctor, prenatal and postpartum information and health care, including access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education and infant care, and a dental cleaning.

New subsection 3355.2(i) is adopted to provide the inmate with the necessary help and assistance for the care and placement of the child after delivery. The adopted language will provide that each pregnant inmate shall be referred to a Medical Social Worker and that the Medical Social Worker shall discuss with the inmate the options available for placement and care of the child after delivery. The Medical Social Worker shall also assist the inmate with access to a phone in order to contact relatives regarding newborn placement, and oversee the placement of the newborn child.

New subsection 3355.2(j) is adopted to comply with PC Sections 3423 and 5007.7 by providing that a pregnant inmate may be temporarily taken to a hospital outside the institution for the purposes of childbirth, and that the pregnant inmate shall be transported in the least restrictive way pursuant to the rules provided in complete Subsections 3268.2(b) and (d). To help ensure the health of the inmate and the unborn child, any pregnant inmate in labor will be treated as an emergency and shall be transported via ambulance to the outside facility, accompanied by custody staff.

New subsection 3355.2(k) is adopted to provide that a pregnant inmate may elect to have a support person present during child birth. The support person may be an approved visitor or the institution's staff who is designated to assist with prenatal, labor, and postpartum care. Approval for the support person will be made by the Warden or designee and any reason for denial shall be provided to the inmate in writing.

New subsections 3355.2(l), (l)(1), (2), (2)(A), (2)(B), and (3) are adopted to specify the postpartum care that a female inmate, who delivers a child, will receive upon return to the institution.